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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 6:17-CR-00005-AA

v.

**UNITED STATES' SENTENCING  
MEMORANDUM**

MICHAEL RAY EMRY,

Sentencing date: July 26, 2017 at 9:00 a.m.

Defendant.

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The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and Nathan J. Lichvarcik, Assistant United States Attorney, hereby submits the following sentencing memorandum and respectfully asks that the Court sentence Defendant to 30 months in prison, to be followed by a three-year term of supervised release and a \$100 fee assessment.

## I. BACKGROUND

In early 2016, federal law enforcement learned that Defendant was illegally in possession of, and trying to sell, a .50 caliber Browning M2 machinegun, as set forth in the PSR at ¶¶ 11-17. On May 6, 2016, law enforcement executed a federal search warrant at Defendant's trailer in the John Day area and found, among other things, the machinegun (with an obliterated serial number), a belt of blank .50 caliber shells, a blasting cap for a bomb and parts to make a different machinegun.

Defendant admitted the Browning machinegun could fire 550-650 rounds a minute. A representative .50 caliber round is depicted at the far left of the photograph below:



Defendant further admitted:

- He took the .50 caliber machine gun from a man in Idaho, who valued the machine gun at approximately \$25,000.00.
- He obliterated the serial number of the machinegun prior to bringing it to Oregon, as depicted in the photograph below:



- He transported the machine gun from Idaho to Oregon earlier in 2016.
- He traveled from Idaho to Oregon in late December 2015 in a van loaned to him by Ammon Bundy, one of the leaders of the armed occupation of the Malheur National Wildlife Refuge in Harney County. Upon arrival in Oregon,

Defendant stayed in a house in Burns, Oregon with Ammon Bundy, Ryan Payne, and other militants.

Defendant was then federally charged by complaint with unlawful possession of a machinegun and a firearm with an obliterated serial number. He pled guilty on January 23, 2017, with a plea agreement, to a one-count information charging unlawful possession of a machinegun. For sentencing purposes, the most important part of the plea agreement sets forth:

8. **Sentence Recommendation:** Based on the negotiations between the parties and taking into account the factors set forth in 18 U.S.C. § 3553(a), the USAO and Defendant will jointly recommend a sentence of 30 months in prison, even if 30 months is above or below the advisory sentencing guideline range as ultimately determined by the Court.

Doc. 35, ¶8.

## **II. ADVISORY GUIDELINE RANGE AND RECOMMENDATION**

As correctly set forth in the PSR and plea agreement, Defendant's total offense level is 19. PSR at ¶45. This derives from a base offense level of 18 under U.S.S.G. § 2K2.1(a)(5) because the defendant possessed a .50 caliber Browning M2 machinegun, a four-level increase because the machinegun had the serial number removed, and a three-level decrease for acceptance of responsibility. *Id.* at ¶¶36-45. Because Defendant falls in Criminal History Category I, his correctly calculated advisory guideline range is 30 to 37 months.

As agreed to by the parties, a 30-month sentence is sufficient, but not greater than necessary, to comply with the 18 U.S.C. § 3553(a) factors. Such a sentence takes into account the aggravating factors of the machinegun possession as well as

Defendant's history with illegally making machineguns and a bomb, all of which is set forth in detail in the United States' Opposition to Motion for Release, filed in 6:16-MJ-00056-JR (D. Or.), ECF No. 14 at pp. 4-15.

### **III. CONCLUSION**

For these reasons, the United States respectfully requests that the Court sentence Defendant to 30 months in prison, to be followed by a three-year term of supervised release and a \$100 fee assessment.

DATED this 19th day of July 2017.

Respectfully submitted,

BILLY J. WILLIAMS  
United States Attorney

*s/ Nathan J. Lichvarcik*  
NATHAN J. LICHVARCIK  
Assistant United States Attorney